Olympic Fruit & Produce Company *and* Teamsters, Chauffeurs and Helpers Union Local 378, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 19-CA-13811

April 23, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Upon a charge filed on August 12, 1981,[1] by Teamsters, Chauffeurs and Helpers Union Local 378, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Olympic Fruit & Produce Company, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 19, issued a complaint and notice of hearing on September 18, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on June 24 the employees designated and selected the Union as their exclusive collective-bargaining representative and that, commencing on or about July 2 and occurring thereafter throughout the months of July and August, Respondent by its general manager and its owner, Roger Howard and Carolyn Howard, respectively, threatened employees that they would close or burn down the business due to the employees' organizing activities, and threatened employees with discharge or replacement because they engaged in these and related activities. In addition, the complaint alleges that Respondent issued a written warning to employee Robert Petrozzi, and granted employees a wage increase and an opportunity to participate in a group dental insurance plan to discourage union activity.

Respondent failed to file an answer to the complaint or request an extension of time for filing an answer, but orally informed counsel for the General Counsel that it possibly was declaring bankruptcy.

On October 22, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, with exhibits attached, for failure to file an answer. Subsequently, on October 30, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter failed to file a response to the Notice To Show Cause and, therefore, the allegations in the Motion for Summary Judgment stand uncontroverted. On December 1, the General Counsel was served with a "notification of Bankruptcy Proceedings and Stay" issued by a bankruptcy court relating to Respondent.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent specifically stated that unless an answer was filed to the complaint within 10 days from the service thereof "all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board." Moreover, according to the uncontroverted allegations of the Motion for Summary Judgment counsel for the General Counsel thereafter further advised Respondent, orally and in writing, of its obligation to file an answer. As noted above, Respondent failed to file an answer or to respond to the Notice To Show Cause.

Respondent's oral communication to the General Counsel that it was considering declaring bankruptcy does not constitute good cause for Respondent's failure to file a timely answer within the meaning of Section 102.20 of the National Labor Relations

[1] All dates are in 1981 unless otherwise indicated.

Board Rules and Regulations. See *Evans Express Company, Inc., and Intercontinental Systems, Inc.*, 232 NLRB 655 (1977). Further, the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. A restraining order issued by a court of bankruptcy staying all judicial proceedings against Respondent does not control this proceeding. See *Ralph Schaffner, an Individual d/b/a Schaffner Construction Co.*, 252 NLRB 967 (1980), and cases cited therein. See also Section 15 of the National Labor Relations Act, as amended. As Respondent has filed no answer within 10 days from the service of the complaint and as no good cause for the failure to do so has been shown, in accordance with the rule set forth above, the allegations of the complaint herein are deemed admitted and are found to be true. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all times material herein, a Washington corporation, engaged in the business of wholesale distribution of fruit and produce, with a place of business located at Tenino, Washington. During the past calendar year, Respondent, in the course and conduct of its business operations, sold and shipped goods and materials or provided services from its facilities within the State of Washington to customers outside the said State, or to customers within said State, which customers were themselves engaged in interstate commerce, both valued in excess of $50,000. During the same period, Respondent also purchased and received goods and materials valued in excess of $50,000 directly from points located outside the State of Washington or from suppliers within said State which in turn obtained goods and materials directly from sources outside said State.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Teamsters, Chauffeurs and Helpers Union Local 378, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The 8(a)(1) Violations*

On or about June 24, a majority of the employees of Respondent designated the Union as their representative for the purpose of collective bargaining with Respondent in the following appropriate unit:

> All drivers and warehousemen employed by Respondent at the facility, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act and all other employees.

The Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

On or about July 2, and occurring thereafter throughout the months of July and August, Respondent, by its general manager, Roger Howard, made repeated threats to employees that he would close or burn down the business in response to the employees' organizing activities, and threatened employees that a former employee identified by Howard as responsible for the union organizing effort was a "marked man" if seen by him. Howard also threatened an employee with discharge in retaliation for his having given to a Board agent information relating to this proceeding, and told an employee that Respondent had paid off people in "the upper echelons" to see to it that there would never be a union in the business. Finally, Howard ripped down an NLRB election notice in the presence of an employee. Respondent's owner, Carolyn Howard, also threatened an employee with Respondent's closure and threatened to change one unit employee to a managerial position and replace the other with a relative of management should the Union win the election.

Accordingly, we find that, by the aforesaid acts and conduct, Respondent has interfered with, restrained, and coerced and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

B. *The 8(a)(3) Violations*

On July 2 Respondent offered and instituted pay increases for its employees and thereafter offered employees an opportunity to participate in a group dental insurance plan not theretofore available to them. On August 29 Respondent issued a formal warning letter to employee Robert Petrozzi stating

that Petrozzi had threatened General Manager Howard with voting to bring in the Union and further stating that such threats would not be tolerated and would lead to immediate dismissal. The above-described conduct was motivated in whole or substantial part for the purpose of discouraging membership or support for the Union.

Accordingly, we find that, by the acts described above, Respondent has discriminated, and is discriminating, against employees in regard to the hire and tenure and terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and has engaged in, and is engaging in, unfair labor practices violative of Section 8(a)(3) and (1) of the Act affecting commerce within the meaning of Section 2(6) and (7) of the Act.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act, we shall order that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The General Counsel had alleged that the course of conduct engaged in by Respondent precludes the holding of a fair election among the employees in the above-described appropriate unit and that these unfair labor practices are so serious and substantial in character and effect as to warrant the entry of a remedial bargaining order. Accordingly, the General Counsel requests that Respondent be required to recognize and bargain with the Union as the exclusive collective-bargaining representative of its employees in the above-described unit, retroactive to July 2, 1981.

It has long been established that the threat of loss of employment and the threat of plant closure, all of which occurred repeatedly herein, are likely to have a lasting inhibitive effect on a substantial percentage of the work force, and therefore are considered "hallmark" violations which support the issuance of a bargaining order. See *Richland Co. & Assoc., Division of McDonald Construction, Inc.*, 256 NLRB 111 (1981). In view of such repeated threats and other unlawful conduct we shall grant the General Counsel's request for a bargaining order. Accordingly, in order to insure that the employees in the appropriate unit will receive the services of their selected bargaining agent for the period provided by law, we conclude that Respondent should be required to recognize and bargain upon request with the Union as of July 2, 1981, the date Respondent embarked on its course of unlawful conduct which prevented the determination of the Union's majority status by a fair election.[2]

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. The Respondent, Olympic Fruit & Produce Company, is an employer within the meaning of Section 2(6) and (7) of the Act.

2. Teamsters, Chauffeurs and Helpers Union Local 378, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening employees with closure or burning of its fruit and produce business, as a result of the employees' organizing activities, Respondent violated Section 8(a)(1) of the Act.

4. By threatening its employees that a former employee identified by Respondent as responsible for the union organizing effort was a "marked man," Respondent violated Section 8(a)(1) of the Act.

5. By threatening an employee with discharge in retaliation for his having given information relating to this proceeding to a Board agent, Respondent violated Section 8(a)(1) of the Act.

6. By threatening change of one unit employee to a managerial position and replacement of the other with a relative of management should the Union win the election, Respondent violated Section 8(a)(1) of the Act.

7. By telling an employee that Respondent had paid off people to see to it that there would never be a union in the business, Respondent violated Section 8(a)(1) of the Act.

8. By ripping down a National Labor Relations Board election notice, Respondent violated Section 8(a)(1) of the Act.

9. By issuing a formal warning letter to employee Robert Petrozzi which stated that his threats to bring in the Union would lead to his immediate dismissal, Respondent violated Section 8(a)(3) and (1) of the Act.

10. By granting its employees a wage increase in the midst of the employees' organizing campaign, Respondent violated Section 8(a)(3) and (1) of the Act.

11. By granting its employees the opportunity to participate in a group dental insurance plan, Respondent violated Section 8(a)(3) and (1) of the Act.

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[2] *Beasley Energy, Inc., d/b/a Peaker Run Coal Company, Ohio Division #1*, 228 NLRB 93 (1977). See also *Glengarry Contracting Industries, Inc.*, 258 NLRB 1167 (1981).

12. These unfair labor practices were so independent, substantial, and pervasive they preclude a fair election and warrant an order to bargain.

13. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Olympic Fruit & Produce Company, Tenino, Washington, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening its employees with the shutdown or burning of its fruit and produce operation if the employees select Teamsters, Chauffeurs and Helpers Union Local 378, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as their collective-bargaining agent.

(b) Threatening its employees that a former employee identified by Respondent as responsible for the union organizing effort was a "marked man."

(c) Threatening an employee with discharge in retaliation for his having given information relating to this proceeding to a Board agent.

(d) Threatening the change of one unit employee to a managerial position and replacement of the other with a relative of management should the Union win the election.

(e) Telling its employees that Respondent had paid off people to see to it that there never would be a union in the business.

(f) Ripping down any National Labor Relations Board notice.

(g) Issuing warning letters to any of its employees which state that their threats to bring in the Union would lead to their immediate dismissal.

(h) Granting its employees a wage increase and the opportunity to participate in a group dental insurance plan for the purpose of discouraging their union activity; provided, however, that nothing herein shall be construed as requiring Respondent to vary or abandon any economic benefit or any term or condition of employment which it has heretofore established.

(i) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Recognize and, upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All drivers and warehousemen employed by Respondent at the facility, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act and all other employees.

(b) Expunge from its files Respondent's formal warning letter to employee Robert Petrozzi which stated that Petrozzi's threats to bring in the Union would lead to his immediate dismissal, or any other reference with respect thereto; and notify him in writing, that this has been done and that Respondent's unlawful conduct will not be used as a basis for future personnel actions concerning him.

(c) Post at its Tenino, Washington, premises copies of the attached notice marked "Appendix."[3] Copies of said notice, on forms provided by the Regional Director for Region 19, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[3] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT threaten employees with the shutdown or burning of our fruit and produce operation if the employees select Teamsters, Chauffeurs and Helpers Union Local 378, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, as their collective-bargaining representative.

WE WILL NOT threaten employees that a former employee identified as responsible for the union organizing effort is a "marked man."

WE WILL NOT threaten employees with discharge in retaliation for their having given information to a Board agent.

WE WILL NOT threaten employees with change of one unit employee to a managerial position and replacement of the other with a relative of management should the Union win the election.

WE WILL NOT tell employees that we had paid off people to see to it that there would never be a union in the business.

WE WILL NOT remove National Labor Relations Board notices.

WE WILL NOT issue warning letters to any employee which state that their threats to bring in the Union would lead to their immediate dismissal.

WE WILL NOT grant employees a wage increase and the opportunity to participate in a group dental insurance plan for the purpose of discouraging their union activity or undermining and dissipating the Union's majority; provided, however, that nothing herein requires us to vary or abandon any economic benefit or any term or condition of employment which we have heretofore established.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise and enjoyment of rights guaranteed them by Section 7 of the National Labor Relations Act, as amended.

WE WILL recognize and, upon request, bargain collectively with Teamsters, Chauffeurs and Helpers Union Local 378, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees found herein to constitute an appropriate unit, and, if an understanding is reached, embody such agreement in a written signed contract. The bargaining unit is:

> All drivers and warehousemen employed by the Employer at its facility, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act and all other employees.

WE WILL expunge from our files our formal warning letter to employee Robert Petrozzi which states that Petrozzi's threats to bring in the Union will lead to his immediate dismissal, or any other reference in respect thereto, and notify him, in writing, that this has been done and that our unlawful conduct will not be used as a basis for future personnel actions concerning him.

OLYMPIC FRUIT & PRODUCE COMPANY